

Application No. 10/078,826
Reply dated 23 September 2004
Responsive to Office Action mailed on 14 July 2004

7 of 10

REMARKS

Amendments to the Description

A paragraph on page 5 has been amended to correct a typographical error by changing "below" to read "above" in the phrase that "the indicator should not respond to the presence of water in the absence of a temperature ~~below~~ above the predefined threshold such as would be experienced when a healthy wearer having a normal body temperature urinates into the article." The erroneous wording was inconsistent with the remainder of the disclosure and the claims, in which it was clearly stated that the fever indicator of the present invention responds to an elevated body temperature above a predetermined threshold temperature.

A paragraph on page 6 has been amended to identify a reference by its Patent number, rather than by its Application number, in light of the reference having matured into a granted Patent since the filing of the present Application.

A paragraph on page 7 has been amended to correct a typographical error by changing "or" to "at" in the phrase "upon contact with urine at a temperature above a certain threshold." The amended wording is consistent with the description that the fever indicator of the present invention determines the body temperature from urine expelled from the wearer's body and responds to an elevated such temperature.

Amendments to the Claims

Independent Claims 1, 10, and 19 have been amended to include the limitation previously found in original Claims 8 and 17 that the fever indicator provides the signal only when the urine is present. Support for this amendment is found in original Claims 8 and 17 and in the original specification, including in the paragraph beginning on page 5 at line 3.

Claim Rejections Under 35 U.S.C. § 102

In the Office Action, only Claim 1 is explicitly stated to be rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,291,181 to DePonte. However, reference is then made to Claims 1 through 8, 10 through 17, 19, and 20 in the explanatory paragraphs following the statement of rejection. Therefore, for purposes of this reply, it is assumed that all of the aforementioned claims were rejected on the same basis as Claim 1 was stated to be rejected.

The rejections of Claims 8 and 17 have been obviated by their cancellation in this reply.

Application No. 10/078,826

8 of 10

Reply dated 23 September 2004

Responsive to Office Action mailed on 14 July 2004

Each of the three independent Claims 1, 10, and 19 has been amended in this reply to read that the fever indicator provides the signal only when the urine is present. In other words, the signal is provided only when two conditions are met, namely that urine expelled from the wearer's body is present and the wearer's body temperature that is determined from that urine is above a predetermined threshold value. All of the other rejected claims depend from these three independent claims and thereby also contain these limitations.

On the other hand, the cited reference clearly discloses that its alarm is activated by the detection of a body temperature at or above a predetermined activating temperature even in a dry condition, *i.e.*, even when no urine is present. See column 6 lines 24 through 42. In fact, the cited reference then goes on to explicitly describe that the temperature detected by a wet sensor is compared to a temperature detected by a still-dry sensor and a wet bed alarm is activated when a pre-programmed differential value is exceeded. See column 6 lines 29, 30, and 46 through 56. Thus, there is no indication in the disclosure that the inventor in the cited reference contemplated providing his fever alarm only when urine was present. Instead, there is explicit disclosure that his fever alarm is provided in a dry condition.

This difference reveals an advantage of the present invention over the bed pad of the cited reference. As clearly explained in the paragraph beginning on page 5 at line 3 of the present Application, the present invention will not provide false alarms by responding to high temperatures while in a dry condition, such as might be encountered inside an automobile on a hot sunny day. On the other hand, the DePonte reference reveals no recognition of such a potential problem.

Additionally, the following points in this section of the Office Action bear comment.

In the Office Action, in an apparent but unstated reference to Claim 10, it was stated that "DePonte discloses an outer cover, absorbent middle layer, and liquid permeable top layer (col. 5, lines 24-57)." However, Claim 10 explicitly recites that the claimed article is disposable. On the other hand, the referenced description in the cited reference is of the bed pad that is explicitly stated to be durable (column 5 lines 56-57) and is further revealed to be durable by dint of being "cleaned through conventional machine laundering" (column 6 lines 7-8). Therefore, the referenced portion of the cited reference fails to show anticipation of Claim 10 or any of Claims 11 through 16 and 18, all of which depend from Claim 10 and contain the term "disposable absorbent article" in their preambles.

Although Claims 8 and 17 have been cancelled in the reply and their rejections have thereby been obviated, it is worth noting that the limitation relating to the presence of urine was misstated and/or

Application No. 10/078,826 9 of 10
Reply dated 23 September 2004
Responsive to Office Action mailed on 14 July 2004

misrepresented in the Office Action, due to the omission of the word "only" from the phrase "only when urine is present". Without this word, the subject matter of these claims can erroneously be inferred to be disclosed in the cited DePonte reference, because its fever alarm is activated regardless of whether or not urine is present and so the condition when urine is present is included. However, an alarm that is provided only when urine is present is clearly not provided when urine is not present. Thus, as explained above in this reply, the limitation that appeared in original **Claims 8 and 17** and which has been incorporated into independent **Claims 1, 10, and 19** in this reply means that two conditions must be met for the alarm of the present invention to be provided, in contrast to the alarm in the DePonte reference that is activated whenever a single condition is met, namely a high temperature, wet or dry.

In summary with regard to these rejections, the cited DePonte reference fails to teach every element of any of the rejected claims in their present form. Accordingly, it is respectfully requested that the rejections of **Claims 1 through 7, 10 through 16, 19, and 20** under 35 USC § 102(b) be reconsidered and withdrawn.

Claim Rejections Under 35 U.S.C. § 103

Claims 8 and 19 were rejected under 35 USC § 103(a) as being unpatentable over the same DePonte reference in view of U.S. Patent No. 6,541,517 to Murphy *et al.*

As noted above, the DePonte reference fails to teach or suggest all of the limitations of independent **Claims 1 and 10**, from which **Claims 9 and 18** respectively depend. The Murphy *et al.* reference likewise fails to teach or suggest any of the missing limitations and thus fails to remedy the shortcomings of the DePonte reference.

In addition, the modification proposed in the Office Action is technically impractical. The DePonte reference is directed to an electrical system for monitoring the temperature of a person and detecting when that person urinates into a pad. The Murphy *et al.* reference is directed to a method for the treatment of skin disorders through the application of a topical skin care composition that may contain the pharmaceutical compound known as triacetin in its formulation. It is not known how a pharmaceutical compound could be incorporated into an electrical system as proposed in the Office Action. Furthermore, given this technical impracticality, the modification proposed in the Office Action is clearly not suggested or motivated by any disclosure found in the cited references.

Application No. 10/078,826 10 of 10
Reply dated 23 September 2004
Responsive to Office Action mailed on 14 July 2004

Finally, the justification provided in the Office Action for making the modification appears to be unrelated to the present invention. Why one of skill in the art related to the detection of a fever in a person would seek to provide "the benefit of an anti-fungal property" (Office Action, section 5) in a fever indicator is not known.

Therefore, the cited prior art references, either singly or in combination, fail to teach or suggest all of the limitations of the rejected claims. The references similarly fail to provide any suggestion or motivation to modify their teachings. Furthermore, the modification proposed in the Office Action would be technically impractical. Finally, the stated justification for the modification is unrelated to the present invention.

Thus, none of the three requirements of MPEP 2143 for the establishment of a *prima facie* case of obviousness has been met with respect to either of the rejected claims. Accordingly, it is respectfully requested that the rejections of Claims 9 and 18 under 35 USC § 103(a) be reconsidered and withdrawn.

Summary of this Response

No new matter has been added in this response. In light of the above amendments and remarks, it is respectfully requested that the rejections be reconsidered and withdrawn and that the pending claims be allowed.

Respectfully submitted,

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